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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,891	07/15/2003	Vincent De Lafocade	NONY 3.0-004	7321
530	7590	08/14/2009	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	
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			08/14/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/619,891	DE LAFORCADE, VINCENT	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 June 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 58,63,65-83,85,86 and 97-107 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 58,63,65-83,85,86 and 97-107 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 86, 97, 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartzman (USP 3,410,645) in view of Lucht (WO 02/18222).

Schwartzman discloses an applicator (24, fig. 1) comprising fixing means (whole portion of 18) for removably affixing the applicator to a neck (14) of a receptacle (12), the applicator including an assembly skirt with a free end and an annular sealing bead (see previous attachment) formed on an inside surface of the assembly skirt and spaced from the free end. Schwartzman fails to show the annular bead spaced from both free end of the assembly skirt and from said fixing means, wherein said fixing means being situated between the free end of the annular bead. Lucht discloses a screw type cap removably affixing to a neck of a receptacle (fig. 1) comprising an assembly skirt comprising a screw threaded means (3), a free end and a sealing bead (4, translated abstract line 10) formed on an inside surface of the assembly skirt, wherein the annular bead being spaced from both free end and the fixing means (see fig. 1) and the fixing means being situated between the free end and the annular bead (see fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the annular bead and the fixing means of

Schwartman with the arrangement as taught by Lucht as an alternative way of fastening the device with the neck of the receptacle.

Claims 58, 63, 77-83, 85, 98-103, 106 and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Robbins (USP 6,523,720).

With regard to claims 58, 63, 77, 100, 106, 107, Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10) containing a cosmetic (col. 1, line 24, Applicant is noted that toothpaste is considered as a cosmetic because it enhances the beauty of the teeth), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing means (16), a second portion (at 12) with a second fixing means (13) locating between the body and the first portion and having a second thread (13) and a second inside diameter, a shoulder (14) connecting the first portion to the second portion, an accessory (30) removably connection to the neck of the receptacle. Hulsch fails to show the second inside diameter being greater than the first inside diameter, the assembly skirt including a skirt fixing means coopeable with the second fixing means on the neck of the receptacle and a sealing surface that abuts the shoulder and being spaced from said skirt fixing means. Robbins discloses a receptacle (figs. 4-6) comprising a neck (at 50) having a first diameter with a first fixing means (44), a second diameter with a second fixing means (38), the second inside diameter being greater than the first inside diameter (see fig. 5, col. 4, lines 10-19), at least one accessory (22) removably fixing to the neck of the receptacle, the accessory including an assembly skirt (see fig. 5) having a skirt fixing means (see fig. 4) cooperable with the second fixing means (38) and a

sealing surface (63, fig. 5) that abuts a shoulder (see fig. 5) and is spaced apart from the skirt fixing means. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the receptacle with the associated accessory of Hulsch with the receptacle assembly as taught by Robbins as an alternative way of securely sealing the applicator to the neck of the receptacle. In regard to claim 78, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct a snap fastening member to at least one of the fixing means, since such modifications is well known in the art. In regard to claims 79-83, Hulsch discloses at least two accessories (20, 30), a first one including a cap (20) and a second one including an applicator (30) and wherein the two accessories each incorporating with the first and second portions of the neck. In regard to claim 85, it would have been an obvious matter of choice to modify the cosmetic of Hulsch with a substance for coloring hair, since such modification is well known in the art. In regard to claim 98, Hulsch shows the shoulder (14) having a planar annular surface (see fig. 4) extending outside the neck, the shoulder being perpendicular to the neck. In regard to claim 99, Hulsch shows both of the fixing means includes threads (see fig. 4). In regard to claim 101, Hulsch in view of Robbins shows the receptacle being made of plastic (Robbins, col. 4, lines 7, 8). In regard to claim 102, Hulsch shows the accessory being removably fixing onto the neck of the receptacle by fastening only on the second fixing means (13) (see fig. 4). In regard to claim 103, Hulsch shows the threads inherently able screw fastening by turning in a same direction.

Claims 65-72, 74-76, 104 rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view Robbins as applied to claim 58 above, and further in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 64-68, Hulsch in view Robbins disclose a kit comprising all the claimed limitations in claims 58, as discussed above except for and a row of teeth including at least a pair of end teeth located at respective ends of the row, at least one of the teeth having at least one dispenser orifice, at least one dispenser orifice substantially limits dispensing of the contents other than between the teeth. As to claims 70-72 and 74-75, Hulsch in view of Robbins et al also fail to show at least exterior of at least one tooth between the first and last teeth having a plurality of dispensing orifices, the plurality of orifices being positioned so as to oppose another one of the teeth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2) being the same length, each tooth includes at least one orifice (62) being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits dispensing of cosmetic other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer et al as

discussed above into the applicator of Hulsch in view of Robbins in order to effectively deliver the liquid to the hair of the user. In regard to claim 69, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the end teeth with no dispensing orifices as an obvious matter of design choice for the known component. In regard to claim 76, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the applicator with molding, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Robbins and further in view of Elmer and further in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claim 73, Hulsch in view of Robbins and further in view of Elmer disclose a kit comprising all the claimed limitations in claim 65, as discussed above except for at least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3) comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Kirschenbaum as discussed above

into the applicator of Hulsch in view of Robbins and further in view of Elmer in order to retard to rapid flow of the liquid down to the teeth.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732